

- ***Requests for Interconnection.*** Interconnection arrangements offered by a dominant service provider must comply with the Telecommunications Act and any rules and policies developed by the Regulator. Such offers must “be no less favourable than any reference interconnection offer that has been approved by the Regulator for the service provider.” The dominant service provider must “meet all reasonable requests for interconnection with the dominant service provider’s telecommunications network at any technically feasible point” and “in all other respects, incorporate reasonable terms and conditions, including technical standards and specifications.” A dominant service provider must: apply “similar conditions to all interconnecting service providers under similar circumstances;” provide “interconnection to interconnecting service providers under substantially the same conditions and of substantially the same quality as it provides for the dominant service provider’s own telecommunications services, or those of the dominant service provider’s affiliates;” make “available on request all necessary or reasonably required information and interconnection;” and use only “information received from a service provider seeking interconnection for the purposes for which such information was supplied and does not disclose the information or otherwise use the information to obtain a competitive advantage.”<sup>46</sup>

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available facilities or resources” and the “failing to comply with the interconnection obligations of a dominant service provider specified in Part VII” of the Telecommunications Act. *See id.* § 29.

<sup>46</sup> *See id.* § 35.

- ***Interconnection Charges.*** A dominant service provider must maintain cost-based interconnection charges. Such charges must comport with the Telecommunications Act and any rules and policies developed by the Regulator, “including any pricing, costing and cost separation guidelines established by order of the Regulator.” The Regulator may, at its discretion, require advance approval for a dominant service provider’s interconnection charges.<sup>47</sup>
- ***Reference Interconnection Offers.*** A dominant service provider must prepare a reference interconnection offer (“RIO”) for approval by the Regulator within the time period specified by order of the Regulator. The RIO must include a full list of services to be supplied to service providers, setting out the associated terms and conditions, including the charges for each service. The dominant service provider must periodically update its RIO. The RIO must comply with the Telecommunications Act and any rules and policies developed by the Regulator.<sup>48</sup>
- ***Publication of Interconnection Agreements.*** A dominant service provider must file a copy of any interconnection agreement with the Regulator within 10 days of execution, after which time the Regulator will publish the agreement on its web site.<sup>49</sup>

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<sup>47</sup> See *id.* § 36.

<sup>48</sup> See *id.* § 37.

<sup>49</sup> See *id.* § 38.

- ***Non-Compliant Interconnection Agreements.*** If the Regulator determines that an interconnection agreement does not comply with the Act, the Regulator may order the parties to amend the agreement.<sup>50</sup>

The Regulator has established fixed and mobile network interconnection rates applicable to SamoaTel and Digicel Samoa, the two principal service providers in the market and the only ones designated as dominant in the provision of a particular service.<sup>51</sup> SamoaTel and Digicel Samoa were unable to reach agreement in private negotiations, so the Regulator intervened to establish interconnection rates. The current rates are effective until September 30, 2013 unless modified by the Regulator:

**Fixed Termination Rate:** The cost based rate for terminating calls on the SamoaTel fixed network that originate on any mobile network in Samoa shall be 3.3 sene per minute.

**Mobile Terminating Rate:** The cost based rate for terminating on any mobile network in Samoa shall be 17.7 sene per minute. (Where this rate applies to calls originating in the fixed network or another mobile network.)

**SMS:** The charge for terminating an SMS message shall be 5 sene per message.

**Directory Services:** The charge for a call to directory enquiries for subscribers to SamoaTel shall not exceed 27 sene per call and all future reductions that might be implemented for this service to the customers of SamoaTel will be passed on to the Digicel customers in the same percentage.

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<sup>50</sup> See *id.* § 39.

<sup>51</sup> 47 C.F.R. § 63.11(k)(3)(ii).

**Inbound International calls:** The parties will charge each other the relevant international transit rate as included in the parties' agreement which has been approved by the Regulator. If the agreement is terminated and is not replaced by a similar agreement, approved by the Regulator, the Regulator shall determine the rates to apply to all incoming international calls transiting their network and destined for the mobile customers of the mobile network of the other party.

**Outbound International Traffic:** The Parties will charge each other a rate not to exceed that charged to its own customers for traffic to similar destinations and any applicable volume discounts.<sup>52</sup>

The Cable Landing Licensees therefore believe that this showing regarding the interconnection regime in Independent Samoa, taken together with the showings in parts II.A and B above and parts II.D and E below, satisfies the requirements of Section 1.768(g)(2) of the Commission's

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<sup>52</sup> The *tala* is the Independent Samoa currency. One *tala* is divided into 100 *sene* and is currently worth approximately US\$0.42. These interconnection rates superseded a series of orders establishing interim interconnection rates and dating back to 2006. See Replacement Interconnection Charges Applicable to Digicel (Samoa) Limited and SamoaTel Limited, Order No. 2009/03, *available at* [www.regulator.gov.ws/Portals/112/Order2009%2003.pdf](http://www.regulator.gov.ws/Portals/112/Order2009%2003.pdf); Replacement Interconnection Charges applicable to Digicel (Samoa) Limited and SamoaTel Limited, Order No. 2009/02, *available at* [www.regulator.gov.ws/Portals/112/Order2009%2002.pdf](http://www.regulator.gov.ws/Portals/112/Order2009%2002.pdf); Interim Interconnection Charges applicable to Digicel (Samoa) Limited and SamoaTel Limited, Order No. 2009/01, *available at* [www.regulator.gov.ws/Portals/112/Order%202009%2001.pdf](http://www.regulator.gov.ws/Portals/112/Order%202009%2001.pdf); Interim Interconnection Charges, Order No. 2008/03, *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4.%20Interconnection%20rate%20order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4.%20Interconnection%20rate%20order.pdf); Fixed and Mobile Network Interconnection Terminating Rates, Order No. 2007/4, *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4.%20Interconnection%20rate%20order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2007-4.%20Interconnection%20rate%20order.pdf); Interim Interconnection Rates for Fixed and GSM Systems, Order No. 2006/4, *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-4.%20Interconnect%20Rate%20Order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-4.%20Interconnect%20Rate%20Order.pdf).

rules, the *Foreign Participation Order*, the Cable Landing License Act, and Executive Order No. 10530.<sup>53</sup>

**D. Independent Samoa's Telecommunications Regulatory Framework Establishes Competitive Safeguards that Ensure the Ability of U.S. Investors and Carriers to Operate Undersea Cables in Independent Samoa**

Independent Samoa's telecommunications regulatory framework establishes competitive safeguards to protect against anticompetitive practices. These safeguards further ensure the ability of U.S. investors and carriers to operate undersea cables in Independent Samoa.

*First*, Independent Samoa's telecommunications regulatory framework establishes cost-allocation rules in the foreign country to prevent cross-subsidization. The Telecommunications Act specifically defines as an abuse of dominant market power:

[U]sing revenues or the allocation of costs from one telecommunications service to cross-subsidize a competitive telecommunications service with the objective of lessening competition, except where such cross subsidy is specifically approved by order of the Regulator or by approval of tariffs for relevant telecommunications services.<sup>54</sup>

As noted in part II.A above, the Regulator is charged with enforcing this requirement and applying statutory remedies as necessary.

*Second*, Independent Samoa's telecommunications regulatory framework establishes timely and nondiscriminatory disclosure of technical information needed to use, or interconnect with, carriers' facilities. The Telecommunications Act specifically defines as an abuse of dominant market power:

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<sup>53</sup> See 47 C.F.R. § 1.768(g)(2).

<sup>54</sup> Telecommunications Act § 27(h)(iv).

[the] failing to make available to other service providers on a timely basis technical specifications, information about essential facilities or other commercially relevant formation which is required by such other service providers to provide telecommunications services and which is not available from other sources” where such action has “the effect of impeding or preventing a competitor’s entry into, or expansion in, a market.”<sup>55</sup>

As noted in part II.A above, the Regulator is charged with enforcing this requirement and applying statutory remedies as necessary.

*Third*, Independent Samoa’s telecommunications regulatory framework protects carrier and customer proprietary information. “Except as permitted or required by law, or with the consent of the person to whom the personal information relates, a service provider shall not collect, use, maintain or disclose customer information or customer communication for undisclosed purposes.”<sup>56</sup> The Telecommunications Act also requires that “[t]he purposes for which customer information is collected by a service provider shall be identified at or before collection, and a service provider shall not, subject to this section, collect, use, maintain or disclose customer information for undisclosed purposes.”<sup>57</sup> Service providers must ensure the accuracy and completeness of customer information, and ensure that both customer information

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<sup>55</sup> *Id. See also id.* § 13(6) (providing that “[l]icences for service providers that provide the same telecommunications services or own or operate the same telecommunications networks shall not unfairly discriminate between such licensees.”).

<sup>56</sup> *Id.* § 50(2).

<sup>57</sup> *Id.* § 50(3).

and communications “are protected by security safeguards that are appropriate to the sensitivity of such information and communications.”<sup>58</sup>

Independent Samoa’s regulatory framework includes numerous other safeguards to guard against anticompetitive conduct. The Telecommunications Act specifically prohibits arrangements between two or more service providers that:

- “directly or indirectly fix the prices or other terms or conditions of telecommunications services in telecommunications markets;”
- “directly or indirectly determine which person will win a contract or business opportunity in a telecommunications market;” or
- “apportion, share or allocate telecommunications markets among themselves or other service providers.”<sup>59</sup>

As noted in part II.A above, the Telecommunications Act also prohibits a dominant service provider from abusing its dominant market position.<sup>60</sup> Such abuses are defined to include (in addition to those discussed above) the following:

- “[B]undling of telecommunications services, whereby the service provider requires, as a condition of supplying a service to a competitor, that the competitor does not require;”
- “[O]ffering a competitor more favourable terms or conditions that are not justified by cost differences if the competitor acquired another service that the competitor does not require;”
- “[P]re-emptively acquiring or securing scarce facilities or resources, including but not limited to rights of way, required by another service provider for the operation of such service provider’s business, with the effect of denying the use of the facilities or resources to such service provider;”

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<sup>58</sup> *Id.* §§ 50(4), (5).

<sup>59</sup> *See id.* § 28.

<sup>60</sup> *See id.* § 27.

- “[S]upplying competitive telecommunications services at prices below long run average incremental costs or such other cost standard as may be established by the Regulator;”
- “[P]erforming any of the following actions, where such actions have the effect of impeding or preventing a competitor’s entry into, or expansion in, a market:”
- “[D]eliberately reducing the margin of profit available to a competitor that requires wholesale telecommunications services from the dominant service provider, by increasing the prices for the wholesale telecommunications services required by that competitor, or decreasing the prices of the retail telecommunications services in markets where they compete, or both;”
- “[R]equiring or inducing a supplier to refrain from selling to a competitor;”
- “[A]dopting technical specifications for networks or systems to deliberately prevent interoperability with a network or system of a competitor;”
- “[F]ailing to make available to other service providers on a timely basis technical specifications, information about essential facilitie[s] or other commercially relevant [in]formation which is required by such other service providers to provide telecommunications services and which is not available from other sources;”
- “[U]sing information obtained from competitors for purposes related to interconnection of supply of telecommunications services by the dominant service provider to compete with such competitors;” and
- “[A]ny other action or activity engaged in by a dominant service provider that the Regulator determines in accordance with section 29 [of the Telecommunications Act] to have the effect, or likely to have the effect, of materially restricting or distorting competition in a telecommunications market.”<sup>61</sup>

The Cable Landing Licensees therefore believe that this showing regarding Independent Samoa’s competitive safeguards, taken together with the showings in part II.A-C above and part II.E below, satisfies the requirements of Section 1.768(g)(2) of the Commission’s rules, the *Foreign Participation Order*, the Cable Landing License Act, and Executive Order No. 10530.<sup>62</sup>

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<sup>61</sup> See *id.*

<sup>62</sup> See 47 C.F.R. § 1.768(g)(2).



**E. Independent Samoa Has an Effective Regulatory Framework for Developing, Implementing, and Enforcing Legal Requirements, Interconnection Arrangements, and Other Safeguards, Thereby Ensuring the Ability of U.S. Investors and Carriers to Operate Undersea Cables in Independent Samoa**

Independent Samoa has an effective regulatory framework for developing, implementing, and enforcing legal requirements, interconnection arrangements, and other safeguards. As discussed in parts II.A-D above, the Telecommunications Act itself establishes detailed legal requirements for the Independent Samoa telecommunications sector. It tasks the Regulator with enforcing these requirements and safeguards and arms the Regulator with a variety of enforcement remedies. The Cable Landing Licensees therefore believe that Independent Samoa's regulatory framework for developing, implementing, and enforcing legal requirements, interconnection arrangements, and competitive safeguards ensures the ability of U.S. investors and carriers to operate undersea cables in Independent Samoa

Independent Samoa's regulatory framework is no mere formality. To the contrary, the Regulator has used the full range of its powers under the Telecommunications Act to advance its pro-competitive, consumer protection, and market development mandates. The Regulator has issued findings of market dominance in particular sectors.<sup>63</sup> It has considered and resolved

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<sup>63</sup> See, e.g., Digicel Dominance Order, No. 2006/6 (finding Digicel Samoa dominant in the cellular radio market), *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-6.%20Digicel%20Dominance%20Order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-6.%20Digicel%20Dominance%20Order.pdf); SamoaTel Dominance Order for International ISP Connectivity, No. 2006/5 (finding SamoaTel dominant in the international Internet access services market), *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-5.%20Samoa%20Tel%20IP%20Dominance%20Order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-5.%20Samoa%20Tel%20IP%20Dominance%20Order.pdf); Telecom Samoa Cellular Dominance Order for Cellular Radio Systems, No. 2006/2 (finding TSCL dominant in the

interconnection disputes between licensed carriers<sup>64</sup> and ordered interconnection and imposed interconnection rates between the dominant service providers SamoaTel and Digicel Samoa.<sup>65</sup> It has set retail rates for dominant service providers.<sup>66</sup> It has also resolved complaints by one service provider against another.<sup>67</sup> The Cable Landing Licensees therefore believe that this

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cellular mobile market), *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-2.%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28TSCL%29.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-2.%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28TSCL%29.pdf); SamoaTel Dominance Order for fixed line telephony and interconnection No. 2006/1 (finding SamoaTel dominant in the fixed-line public telephony and interconnection to fixed-line networks markets), *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-1.%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28SamoaTel%29.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2006-1.%20Order%20Designating%20a%20Dominant%20Service%20Provider%20%28SamoaTel%29.pdf).

<sup>64</sup> See, e.g., Refusal by SamoaTel to Interconnect with Digicel's DigiFixed Service, Order No. 2010/02 (ordering SamoaTel to interconnect with Digicel's DigiFixed service and ordering Digicel to refrain from charging customers retail rates below the mobile termination rates as determined by the Regulator in Order 2010/01), *available at* [www.regulator.gov.ws/Portals/112/Order%202010.01%20-%20Cost%20Based%20Rates.pdf](http://www.regulator.gov.ws/Portals/112/Order%202010.01%20-%20Cost%20Based%20Rates.pdf); Refusal by SamoaTel to Interconnect with Digicel's Fixed Wireless Service, Order No. 2009/04 (ordering SamoaTel to interconnect with Digicel's fixed wireless service), *available at* [www.regulator.gov.ws/Portals/112/Order2009%2004%20-SamoaTel%20to%20interconnect%20with%20Digifixed.pdf](http://www.regulator.gov.ws/Portals/112/Order2009%2004%20-SamoaTel%20to%20interconnect%20with%20Digifixed.pdf).

<sup>65</sup> See part II.D above.

<sup>66</sup> See, e.g., Approval of Changes to Retail Pricing Structure for SamoaTel Limited, Order No. 2008/02, *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-02.%20Approval%20of%20Changes%20to%20Retail%20Pricing%20Structure%20for%20SamoaTel%20Limited.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-02.%20Approval%20of%20Changes%20to%20Retail%20Pricing%20Structure%20for%20SamoaTel%20Limited.pdf); Order for New SamoaTel Fixed to Mobile Rates, Order No. 2008/1, *available at* [www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-1.%20SamoaTel%20mobile%20rate%20order.pdf](http://www.regulator.gov.ws/Portals/112/documents/legal/Orders/2008-1.%20SamoaTel%20mobile%20rate%20order.pdf).

<sup>67</sup> See, e.g., SamoaTel Limited's Complaint against Digicel (Samoa) Limited's LCR/Sim Box Units, Order No. 2010/03 (ordering Digicel to reprogram all least-cost router ("LCR") units, refrain from charging customers retail rates below the mobile termination rates as determined by the Regulator in Order 2010/01, provide the Regulator with evidence of

showing regarding Independent Samoa's development, implementation, and enforcement of its telecommunications regulatory framework, taken together with the showings in parts II.A-D above, satisfies the requirements of Section 1.768(g)(2) of the Commission's rules, the *Foreign Participation Order*, the Cable Landing License Act, and Executive Order No. 10530.<sup>68</sup>

### III. CERTIFICATIONS

#### A. Accuracy-of-Information Certification<sup>69</sup>

By the signature below, each Cable Landing Licensees certifies that it shall maintain the continuing accuracy of information provided pursuant to 47 C.F.R. § 1.768, for a period of 45 days after the filing of this notification and will file a corrected notification with the Commission as promptly as possible during this period, and in any event within 10 days unless good cause is shown, in the event that the information is no longer accurate during the 45-day period.

#### B. Certification re the Anti-Drug Abuse Act of 1988<sup>70</sup>

By the signature below, each of the Cable Landing Licensees certifies that no party to this application is subject to a denial of federal benefits under Section 5301 of the Anti-Drug Abuse Act of 1988, as amended.

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regulatory approval for retail rates charged for LCR services, and submit to the Regulator copies of contracts between Digicel Samoa Limited and its LCR customers), *available at* [http://www.regulator.gov.ws/Portals/112/Use\\_Order2010.03.pdf](http://www.regulator.gov.ws/Portals/112/Use_Order2010.03.pdf).

<sup>68</sup> See 47 C.F.R. § 1.768(g)(2).

<sup>69</sup> See *id.* § 1.767(h).

<sup>70</sup> See *id.* §§ 1.767(a)(8), 63.18(o).

Foreign Carrier Affiliation Notification of  
AST Telecom LLC d/b/a Blue Sky Communications,  
American Samoa Hawaii Cable, LLC, and  
Samoa American Samoa Cable, LLC  
15 March 2011  
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## CONCLUSION

The Cable Landing Licensees hereby request expedient approval of this foreign-carrier affiliation notification in order to allow timely closing on its acquisition of SamoaTel.



Adolfo Montenegro

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D/B/A BLUE SKY COMMUNICATIONS

President  
AMERICAN SAMOA HAWAII CABLE, LLC

President  
SAMOA AMERICAN SAMOA CABLE, LLC

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15 March 2011

### **CERTIFICATION**

I certify that I am an officer of AST Telecom, LLC, d/b/a Blue Sky Communications, American Samoa Hawaii Cable, LLC, and Samoa American Samoa Cable, LLC; that I have examined the foregoing notification and that to the best of my knowledge, information and belief, all statements of fact contained in this notification are true.

A handwritten signature in black ink, appearing to be 'Adolfo', written over a horizontal line.

**Adolfo Montenegro**

**President and Chief Executive Officer  
AST TELECOM, LLC,  
D/B/A BLUE SKY COMMUNICATIONS**

**President  
AMERICAN SAMOA HAWAII CABLE, LLC**

**President  
SAMOA AMERICAN SAMOA CABLE, LLC**

**Executed on March 15, 2011**

## **LIST OF EXHIBITS**

- Exhibit 1:     Telecommunications Act (No. 20) 2005, as amended**
- Exhibit 2:     Individual Licence Granted by the Regulator Under the Telecommunications Act 2005 to American Samoa Hawaii Cable, LLC, for the Establishment and Operation of a Submarine Cable System in Samoa, to Be Known as the Samoa-American Samoa Cable System (May 2009)**
- Exhibit 3:     Foreign Investment Act (No. 3) 2000, as amended**
- Exhibit 4:     Rule for the Licensing of Telecommunications Services and the Ownership or Operation of Telecommunications Networks in Samoa**
- Exhibit 5:     Guidelines: Application for a Foreign Investment Certificate in Samoa**

**Exhibit 1:**

**Telecommunications Act (No. 20) 2005, as amended**

## SAMOA

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2005, No.20

**AN ACT to establish a new legislative framework for the telecommunications sector, and to repeal and harmonize certain provisions of the Post Office Act 1972, the Postal and Telecommunications Services Act 1999 and the Post and Telecommunications Internet Act 1997.**  
*[29<sup>th</sup> June 2005]*

**BE IT ENACTED** by the Legislative assembly of Samoa in Parliament assembled as follows:

**PART I**  
**PRELIMINARY**

**1. Short Title and commencement-**(1) This Act may be cited as the Telecommunications Act 2005.

(2) This Act shall commence, in whole or parts or sections or paragraphs thereof, on a date or dates nominated by the Minister.

(3) Notice of commencement of this Act, in whole or parts or sections or paragraphs, shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

**2. Interpretation-**(1) In this Act, unless the context requires otherwise:

“Act” means the Telecommunications Act 2005;

“Affiliate” means, in relation to any one person, any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person;

“Broadcasting service” means the transmission of radio or video programming to the public on a free, pay, subscription or other basis, whether by cable television, terrestrial or satellite means, or by other electronic delivery of such programming;

“Class licence” means a licence issued pursuant to sections 13 and 15 to a defined class of service providers and which applies to a person falling within the defined class without that person having to apply for the licence;

“Commencement date” means the date or dates on which this Act commences, in whole or parts or section or paragraphs, as specified in section 1(2);

“Control” means the power to determine the actions of another person in any manner, whether directly through the ownership of shares or other securities or indirectly through an agreement or arrangement of any type;

“Exemption order” means an order made by the Regulator pursuant to section 14;

- “Government” means the Government of the Independent State of Samoa;
- “Individual licence” means a licence issued pursuant to sections 13 and 15 to an individual person upon the application of that person;
- “Interconnection” means the physical and logical linking of telecommunications networks used by the same or a different service provider in order to allow the users of one service provider to communicate with users of the same or another service provider, or to access the facilities and/or services of another service provider, and includes ‘access’, meaning the making available of telecommunications facilities or services by one service provider to another for the purpose of providing telecommunications services;
- “Licence” means an individual licence or a class licence issued pursuant to this Act, but does not include a radio spectrum licence or a licence issued prior to the coming into force of this Act;
- “Licensee” means a person who holds a licence under this Act;
- “Minister” means the Minister responsible for Communications and Information Technology;
- “Ministry” means the Ministry responsible for Communications and Information Technology;
- “Office of the Regulator” means the entity established by section 9;
- “Order” means a written order made by the Regulator pursuant to this Act, a regulation or rule;
- “Public voice telephony services” means the commercial provision to the public of the direct transport and switching of voice telephony in real time from and to network termination points;
- “Prior licence” means an authorization for the operation of a telecommunications network or provision of a telecommunications service issued prior to the coming into force of this Act;
- “Radio spectrum licence” means a licence issued pursuant to section 22;

- “Reference interconnection offer” has the meaning assigned to it in section 37;
- “Regulation” means a regulation made pursuant to the Ministry of Communications and Information Technology Act 2005;
- “Regulator” means the person appointed pursuant to section 6 to head the Office of the Regulator;
- “Rule” means a rule made by the Regulator pursuant to this Act;
- “Samoa” means the Independent State of Samoa;
- “Service provider” means a person that provides a telecommunications service to the public or that owns or operates a telecommunications network used to provide telecommunications services to the public;
- “Telecommunications equipment” means equipment intended to be connected directly or indirectly to a telecommunications network in order to send, transmit or receive telecommunications services;
- “Telecommunications facility” means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications;
- “Telecommunications network” means any wire, radio, optical or other electromagnetic system for routing, switching or transmitting telecommunications services between network termination points;
- “Telecommunications service” means any form of transmission of signs, signals, text, images or other intelligence by means of a telecommunications network, but does not include a broadcasting service;
- “Terms of Service” means the general terms and conditions upon which a service provider shall provide telecommunications services to customers and which are set out in a document prepared in accordance with Part IX of this Act. Once approved by the Regulator, the Terms of Service shall, together with this Act, the regulations, rules, orders and approved tariffs, be binding upon a dominant service provider and its users; and

“Universal Access Fund” means the fund established pursuant to section 21.

**3. Objectives of this Act-**The objectives of this Act are to;

- (a) facilitate the development of the telecommunications sector in order to promote social and economic development;
- (b) promote universal access to telecommunications services at a affordable prices;
- (c) promote the efficient and reliable provision of telecommunications services, relying as much as possible on market forces, such as competition and private sector investment, to achieve this objective;
- (d) promote the introduction of advanced and innovative information and communications technologies to meet the needs of the people of Samoa;
- (e) encourage sustainable foreign and domestic investment in the telecommunications sector;
- (f) establish a framework for the control of anti-competitive conduct in the telecommunication sector;
- (g) promote efficient interconnection arrangements between service providers;
- (h) protect the interests of subscribers and other customers of telecommunications services;
- (i) define and clarify the institutional framework for policy development and regulation of the telecommunications sector, as well as the separation of government policy and regulatory functions from those of providing telecommunications services;
- (j) promote efficient management and use of radio spectrum and other scarce resources;
- (k) establish a fair, objective and transparent licensing regime for service providers;
- (l) establish and efficient approvals regime for telecommunications equipment; and

- (m) establish measures to enforce the implementation of this Act and to prohibit certain types of conduct contrary to the orderly development and regulation of the telecommunications sector.

**4. Application of this Act-**(1) This Act shall bind the State.

(2) This Act applies to any act or omission or event which occurs in Samoa or any other place.

**5. Repeal of Acts-**The Acts, or parts or sections of the Acts, listed in the Schedule are repealed.

## **PART II**

### **THE REGULATOR**

**6. Appointment of Regulator-**Subject to sections 7 and 8 and this section:

(1) There shall be appointed by the Head of State, acting on the advice of Cabinet, a Regulator who shall have and exercise the responsibilities, functions and powers conferred by this Act an any applicable law.

(2) The appointment of the Regulator shall be for a term of three years, which term may be renewed by the Head of State, acting on the advice of the Cabinet, for additional terms of three years.

(3) A person may not be removed as Regulator prior to the completion of a three year term of an appointment unless the person:

- (a) at the time of appointment and while holding the position of Regulator, has a conviction or is convicted for any offence, in Samoa or elsewhere:
  - (i) involving dishonesty or corruption; or
  - (ii) where the penalty for such offence includes imprisonment for one year or longer (irrespective of whether such penalty has been or is imposed concerning such conviction); or

- (b) is an undischarged bankrupt; or
- (c) is determined by a medical practitioner to be unable to perform the Regulator's responsibilities, functions, duties and powers due to any physical or mental incapacity; or
- (d) breaches the Code of Conduct detailed in section 19 of the Public Service Act 2004.

(4) The Head of State, acting on the advice of Cabinet, may appoint the Minister or another person to exercise the responsibilities, functions and powers conferred by this Act and any applicable law on the Regulator, on an interim basis, during:

- (a) the period until the first Regulator is appointed;
- (b) any period of time after a Regulator ceases to hold office and before a replacement is appointed; and
- (c) a period of temporary absence or incapacity of the Regulator

(5) A person appointed under subsection (4) may exercise all of the responsibilities, functions and powers conferred on the Regulator by this Act and any applicable law notwithstanding any other provision of this Act.

(6) An appointment under subsection (4) may not continue for a period longer than six months.

**7. Disqualification-**(1) Subject to this section, a person is not eligible to be appointed or to continue as the Regulator or as a member of the professional staff of the Regulator if the person, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, has any pecuniary or proprietary interest in:

- (a) a service provider; or
- (b) a manufacturer or supplier of telecommunications equipment, except where the supply is incidental to the general merchandising of goods by wholesale or retail.

(2) Where any interest prohibited by subsection (1) vests in the Regulator or a member of the professional staff by will or succession for the benefit of the Regulator or a member of the professional staff, as the case may be, such interest shall be



absolutely disposed of within three months of vesting, and any failure to act in accordance with this subsection shall make the Regulator or member of the professional staff, as the case may require, liable under subsection (1).

(3) For the purpose of this section:

- (a) a pecuniary or proprietary interest shall include, but is not limited to, a pecuniary or proprietary interest held by a spouse or parent or child or brother or sister of the Regulator or member of the professional staff, as the case may require; and
- (b) the professional staff of the Regulator shall be any member of staff of the Regulator nominated as such by the Regulator, as a class of such persons or individually, or both.

**8. Responsibilities, Functions and Powers of the Regulator-**(1) The Regulator shall:

- (a) advise the Minister on policy for the telecommunications sector;
- (b) implement this Act, the regulations and other elements of the legal and regulatory framework for the telecommunications sector;
- (c) issue individual and class licences,<sup>4</sup> and design and run the process for issuance of such licences;
- (d) monitor and enforce compliance by licences with the conditions of their licences;
- (e) amend or revoke licences in accordance with this Act and the regulations;
- (f) define network termination points, if required for the proper interpretation and administration of this Act, the regulations and rules;
- (g) prescribe procedures for the approval of telecommunications equipment for attachment to telecommunications networks in Samoa, using the least onerous method available, such as approval of equipment previously approved for attachment in specified countries or regions;

- (h) establish a radio spectrum plan and manage radio spectrum allocated to the telecommunications sector;
- (i) regulate interconnection between telecommunications networks of different service providers;
- (j) establish and manage a numbering plan and assign numbers to service providers;
- (k) resolve disputes between service providers, and between customers and service providers.
- (l) institute and maintain appropriate measures for the purpose of preventing dominant telecommunications service providers from engaging in or continuing anti-competitive practices;
- (m) represent Samoa in international telecommunications organizations, in cases where the Minister decides the Regulator is the appropriate representative;
- (n) carry out any responsibilities, functions and powers assigned to the Regulator in any universal access program or arrangements established pursuant to Part IV of this Act;
- (o) maintain records of licences and licence applications, equipment approvals and applications and interconnection agreements and, except where the Regulator considers it justified for reasons of commercial confidentiality, make the documents in such records available to the public;
- (p) publish procedures, guidelines and interpretations to facilitate the implementation of this Act;
- (q) make rules for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof by the Regulator;
- (r) make orders respecting any matter or thing within the jurisdiction of the Regulator under this Act, a regulation or rule, including orders to compel a person to comply with or implement the purposes of this Act, a regulation, rule or licence,